106

No.08-25

Supreme Court, U.S.
FILED
SEP 18 2008
OFFICE OF THE CLERK

In the
Supreme Court of United States

IN THE MATTER OF KINGSLEY K. HUBBY

BEN HUBBY MD

Petitioner

SUPPLEMENTAL

DAY PITNEY LLP

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Connecticut

---

SUPPLEMENTAL BRIEF IN REQUEST, GIVEN MRS. HUBBY'S CIRCUMSTANCES ARE WORSENING, THAT THE COURT PROVIDE RELIEF AND TAKE JURISDITION OF CONSTITUTIONAL QUESTIONS AND CONFLICT OF INTEREST IN THE CENTER OF THOSE ISSUES

PETITION FOR WRIT OF CERTIORARI

BEN HUBBY MD, Pro Se
815 E. 66TH Street
Savannah Ga. 31405
Tel 912 352 1088
FAX 912 352 3556

Mr. Allan Taylor
Counsel of Record
Day Pitney LLP
242 Trumbull St.
Hartford CT 06103
Tel 860 275 0225
FAX 860 275 0343

QUESTION PRESENTED

In case where, as a favor to an influential law firm, state courts denied protection of law for an impaired elder whose circumstances have worsened, will the Supreme Court intervene to provide relief to Mrs. Hubby and her son?

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

JURISDICTION 1

SUMMARY 2

STATEMENT OF FACTS 3

ARGUMENT

I The State removed Mrs. Hubby from protection of law for favoritism in the courts 5

[A] The courts failed to address conflict of interest

[B] Rulings came from politics and favoritism

II Mrs. Hubby is trapped by violation of ethical norms related 7

III Correction of Mrs. Hubby's circumstances is blocked 7

IV Improprieties in state courts that cause citizens to lose rights is a national problem 8

CONCLUSION 10

RELIEF REQUESTED 11

APPENDIX 15

TABLE OF AUTHORITIES

American Heritage, Inc. v. Gelinas, 62 Conn App 711 (2001) 6

Andrews v. Gorby, 237 Conn. 12 (1996) 8

Baker v. Carr, 369 U. S. 186 (1962) 2

Cox Broadcasting Corp. v Cohn, 420 U.S. 469 (1975) 1

Griswold v. Connecticut, 381 U.S. 479 (1965) 2

Prince v. Sheffield, 158 Conn. 286 (1969) 7

Village of Willowbrook v. Olech, 528 U. S. 562 (2000) 11

TEXTS

Official 2008 Connecticut Practice Book Commission on Official Legal Publications 5

JURISDICTION

Under Title 28 U. S. C. Section 1257, the Supreme Court's jurisdiction to review state court decisions on

federal issues requires finality below and no possible state remedy. Nevertheless, the Court reserves leeway as to how "finality" when there is an important federal question and further proceedings are pending below. [1]

The federal question is whether Connecticut state courts are allowed to deny application of state law for an elder to favor a law firm that injured her as to carve out a class of citizens denied equal protection. [2]

In his petition to the Connecticut Supreme Court [3], Ben Hubby showed equal protection was denied, as in *Shelley v. Kraemer* and *Burton v. Wilmington Parking Authority.*

The Supreme Court took jurisdiction in *Cox Broadcasting Corp. v. Cohn*,[4] before the trial on the broadcast of a rape victim's identity, which was against state law; and created *four exceptions* that allow jurisdiction on federal issues, while further proceedings remain below.

This case falls within Cox's *second exception*, where a federal issue ought to be addressed while lower courts resolve issues that will not require further Supreme Court review.

Under the statute applying to appointment of an involuntary conservator for an impaired person, [5] Ben

1 *Cohen v. Beneficial Loan Corp*, 337 U. S. 541, 546 (1949) cited in *Supreme Court Practice* Ninth Edition by Gressman E, Geller KS, Shapiro SM, et al. BNA Books 2007 Page 156

2 Petition for Certiorari Pages 6-9; 12-14; 20-22

3 Appendix **B** in Petition for Certiorari Pages A- 11 &12

4 420 U.S. 469 (1975)

5 Petition for Certiorari Page 2

Hubby was permitted to petition for appointment as his mother's conservator and move in state courts for her, while awaiting a hearing on his appointment.[6]

As the U. S. Supreme Court allowed operators of a family planning clinic to assert constitutional rights of married persons seeking contraception[7] Ben Hubby may come to the Supreme Court on behalf of his mother's constitutional rights, and his own behalf, under *Baker v. Carr*,[8] to seek relief based on an injury traceable to another party, remedied by a favorable ruling[9] — the injury of a son kept from rescuing his mother.

There will be no recourse in further proceedings below unless the Supreme Court intervenes.

SUMMARY

Mrs. Hubby, who just turned 100 years old, was refused protection of law to keep in her affairs a law firm that came to harm to her security. She was exploited, her money was used to defeat her interests, her own physician was compromised, and Ben Hubby's quest to help was blocked. Mrs. Hubby's circumstances have deteriorated; her household is on drift without someone in charge, yet politics in the state courts block Ben Hubby from being appointed his mother's guardian, though she needs one more every day.

---

6 Id Section on "*Standing*" on fourth page of Petition

7 *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)

8 369 U. S. 186, 204 - 208 (1962)

9 Justices Breyer's and O'Connor's dissent in *Nike, Inc. ET. AL. v. Kasky*, 539 U. S. 654, 667 (2003), citing *Bennett v. Spear*, 520 U. S. 154, 162 (1997).

STATEMENT OF FACTS

Exhibits in Appendix of Petition for Certioari are referred to as: P– A, P- B, P–C, etc.

Exhibits attached to this Supplemental Brief: S–A, S–B, S–C, etc

Deterioration in Mrs. Hubby's circumstances

As the U. S. Supreme Court will appreciate, the circumstances for an elder approaching her 100th year are dynamic.

- Mrs. Hubby's mental faculties continue to decline. (S–A) [10].
- Mrs. Hubby is falling and arrangements for her safety need to be re- constituted
- There is no guardian for Mrs. Hubby's person hood to take charge and make necessary changes in her care and supervision. (P– A)
- As no one is in charge, there is indecision and drift, which is not the way things should be.

The logjam

While Mrs. Hubby's affairs were brought under the jurisdiction of the courts, she was opportuned to write a letter in praise of the law firm that diminished

---

10 Ben Hubby's 11/27/07 affidavit on his mother's declining mental acuity and memory is attached to his re-petition to be named his mother's conservator filed in Probate Court in November, 2007

her security, [11] (Appendix S-**B**) although Mrs. Hubby indicates she does not know what is going on in her legal representation. [12]

Ben Hubby moved for competency exam to protect his mother. Gallup opposed. (S-**C**) Mrs. Hubby's personal physician was compromised into believing Gallup is the guardian of her personhood such that Thompson ought not speak to Ben Hubby about any aspect of her health (S-**D**), whereas there is no guardian of Mrs. Hubby's personhood.[13]

Motion for *trial de novo*

Ben Hubby moved in Superior Court for a trial de novo, designated as # 129 on the Superior Court docket sheet. (S-**H**) No order has been entered on this motion, which is still pending (S–**I**)

In Appellate Court, Ben Hubby moved to have the case remanded for transfer to the Superior Court of the Middlesex District for *trial de novo* in Judge Elaine Gordon's court (S– **J**) under Sec. 12-1 of the Connecticut Practice Book (S–**K**) Appellate Court did not rule on this motion. [14]

Thus, *two separate motions* for a trial de novo under Connecticut law – one in Superior Court, one in Appellate Court – were never acted upon.

---

11 Petition For Writ Of Certiorari Page 4 and top section of Page 5

12 Id Appendix **C** # 2

13 Id Appendix A-1

14 # 8 in affidavit attached to Ben Hubby's re-petition to be appointed his mother's conservator, 11/27/07

ARGUMENT

I

THE STATE REMOVED MRS. HUBBY FROM PROTECTION OF LAW FOR FAVORITISM

[A] The law was denied

The state courts did not apply Connecticut law for Mrs. Hubby bearing on conflict of interest, attorney disqualification, the duty of courts to enforce Rules Professional Conduct, and the power of trial courts to disqualify attorneys *sua sponte* without reference to standing– *all the law of this case.* [15] [16]

The courts failed to address conflict of interest

The Official 2008 Connecticut Practice Book states Rule 1.7 of the ABA's Model Rules was amended June 26, 2006 to take effect January 1, 2007 [17] six days before Ben Hubby petitioned to be named his mother's involuntary conservator.

The Rule states ".. a lawyer shall not represent a client if the representation involves a concurrent conflict of interest" which exists if "the representation of one client will be directly adverse to another client"; or "materially limited" by the lawyer's duty to another

---

15 Petition for Certiorari, Pages 12 to top of 14

16 With the exception that Superior Court Judge Elaine Gordon allowed Ben Hubby to move for disqualification of Day Pitney.

17 Official 2008 Connecticut Practice Book. Commission on Official Legal Publications 2008 Page 13

client. Joint representation is allowed if the lawyer reasonably believes he can give diligent representation to both, and each gives informed consent in writing.[18] There is no claim Mrs. Hubby signed a waiver.

For attorney Dudley to *help NM recover his power*, he had to sacrifice Mrs. Hubby's security, which he did. To *help Mrs. Hubby* gain security, NM would lose his power.

Rule 1.7 encompasses a most important principles of legal ethics, yet, in over 15 months, the state courts refused to enforce it, though they have in other cases.[19]

[B] Court rulings came from favoritism and politics

- At the outset Judge McNamara let it be known the Probate hearing *was not going to go against Day Pitney*, no matter what the facts were.
- That Judge McNamara's refused to schedule a hearing on Ben Hubby's petition in 5 1/2 months, (S-**E**, S-**F**) when the law requires a hearing in one month, indicates the Court was burying this case.
- If the courts intended to be fair, due process would not have been withheld. [20]
- No rational reason can be found for the courts' refusal to apply law on conflict of interest other than favoritism towards Day Pitney.

---

18 Id

19 As in *American Heritage, Inc. V. Gelinas*, 62 Conn. App. 711 (201)

20 Petition for Certiorari Pages 20-22

II

MRS. HUBBY IS TRAPPED BY VIOLATION OF ETHICAL NORMS

When Justice Brandeis prepared his dissent in *Olmstead v. United States* [21], he wrote on yellow lined paper: "...In a government of laws, the Government must observe the law scrupulously. It teaches the whole people by example..." [22]

Here, the lesson was learned and ethical norms were breached.

- The law firm used its power to oppose Ben Hubby's quest to help his mother, and Mrs. Hubby was made to pay for the opposition, as the firm was on her penny
- It appears there were four violations of the Rules of Professional Conduct which govern 1) conflict of interest; 2) contact with a represented person; 3) not misleading a tribunal; and 4) diligent representation, never harm.

III

CORRECTION OF MRS. HUBBY'S CIRCUMSTANCES IS BLOCKED

Under *Prince v. Sheffield,*[23] an appeal from probate

---

21 277 U.S. 438 (1928)

22 Quoted in *Brandeis An Intimate Biography of one of America's truly great Supreme Court justices.* Lewis J. Paper 1980 Prentice Hall, Inc. Englewood Cliffs, New Jersey 1980 Page 311

23 158 Conn. 286 (1969)

should result in a full *de novo* hearing unless a record has been made. *Andrews v. Gorby.* [24] No court reporter was present at the Probate hearing, no transcript was taken.

Yet, as Connecticut law, fairness and justice were withheld, it is not likely Ben Hubby will be granted *trial de novo*, unless the Supreme Court intervenes.

IV
IMPROPRIETIES IN STATE COURTS THAT CAUSE CITIZENS TO LOSE CONSTITUTIONAL RIGHTS IS A NATIONAL PROBLEM

Mississippi

Plaintiff's attorney, Richard Scruggs, reputed to have made a billion dollars on class action cases, asserted these cases were successful because the lawyers in Mississippi have relationship with state court judges, who respond to the popularity of suits against rich, unpopular defendants. "It doesn't matter what the evidence or the law is." Money is spread around and everyone is "in on the deal" Law suits have been filed on behalf of clients "who were not always legitimately injured" [25] [26]

---

24 237 Conn. 12, 15-16 (1996)

25 Peter J. Boyer: The Bribe - How the Mississippi lawyer who brought down Big Tobacco overstepped. The New Yorker May 19, 2008, quoting from Scruggs's "Asbestos for Lunch" discussion, referenced below

26 Richard Scruggs, "Asbestos for Lunch" - panel discussion 5/9/02 INDUSTRY COMMENTARY June 11, 2002.

Nevada

The *Los Angeles Times* investigated the wide open, "frontier justice" dispensed by many district state judges in Las Vegas. [27] [28] Judges commonly accept campaign contributions from lawyers appearing in their courtrooms, often when their cases are pending. It is widely accepted that contributions affect outcome of cases. Judges often do not disclose relationships that have swayed their rulings. In commercial law suits, judges tend to appoint as receivers their friends, whose billings are so high that companies they oversee are fleeced.

Ohio

The *New York Times* studied the influence of campaign contributions for election to the Ohio Supreme Court and elsewhere[29] Amongst 1500 cases decided by the Ohio Supreme Court over 12 years, justices often accepted contributions after argument, but before votes were cast. When contributions were greatest by liberal groups, decisions tended their way. The reverse occurred now that corporate interests contribute the most money. Six out of ten justices studied voted for their contributors more than 70% of the time. In a survey by *Justice at Stake* of 2400 state judges, more than half admit campaign contributions influence their decisions.

---

27 Michael J. Goodman and William C. Rempel: "In Las Vegas, They're Playing With a Stacked Deck". *Los Angele Times* June 8, 2006

28 Id: " For This Judge and His Friends, One Good Turn Led to Another" *Los Angeles Times* June 9, 2006

29 Adam Liptak and Janet Roberts: "Campaign Cash Mirrors a High Court's Rulings" *NY Times* 10/1/2006

** ** ** **

Litigants adversely affected by rulings driven by politics, favoritism or corruption in state courts are denied equal protection of the laws. With evidence of widespread improprieties that can defeat Constitutional rights, it is striking a paucity of such cases come to the Supreme Court [30]

When litigants are overwhelmed by politics and favoritism in state courts, it is tough to decide whether to keep fighting what was a hopeless battle. Mr. Plessy, Mr. Lyons, Mr. Korematsu, Mr. Konigsberg kept fighting.

CONCLUSION

Years ago, in the rural South, when a doctor, who sewed up a cut on a small boy's arm, realized the lad's mother couldn't pay the bill, he took the stitches out. On that day, medicine was used to do harm.

When the law firm undid arrangements that attorney Granville Morris placed for Mrs. Hubby's peace of mind, the firm took stitches out of her security and law was used for harm.

After 15 months of litigation no trace is found that the state courts ruled for law, for Rules of Professional Conduct, for the lawyer's duty to his client, or for Mrs. Hubby's welfare.

From the inclination of state courts of Connecticut to let politics trump protection of law to benefit a favored law firm; and improprieties in state courts across America that lead to a denial of equal protection of the laws, Mrs. Hubby may represent a rather large

30 In a search of Justia - the Supreme Court Center (http://supreme.justia.com/index.html)

class, although every single citizen is protected by the 14th Amendment from arbitrary discrimination by government. [31]

No matter harm to Mrs. Hubby, the courts were determined not to hold an influential law firm accountable to rules that govern the practice of law and the law itself.

Yes, the case is about a 100 year old woman, but the law and the rule of law were on trial and they did not fare well.

Politian legibus, colleges polities, adaptandae [32]

RELIEF REQUESTED

Ben Hubby requests that :

1) Given Mrs. Hubby's circumstances are deteriorating, the Supreme Court appoint Ben Hubby involuntary conservator of his mother's estate and personhood pending a hearing before Superior Court Judge Elaine Gordon, of the Middlesex District Family Court, who was originally assigned this case.
2) The United States Supreme Court reverse the

---

31 *Village of Willowbrook v. Olech*, 528 U. S. 562, 565 (2000)

32 "Politics are to be adapted to the laws, not the laws to politics". *Black's Law Dictionary, 8th Edition.* Bryan A Garner, Editor in Chief. Page 1746

decision of the Connecticut Supreme Course and order the Supreme Court of Connecticut to ensure that state law and due process are applied in this and all cases before the state courts of Connecticut.

3) The Supreme Court retain jurisdiction on the constitutional issues raised in Ben Hubby's petition.
4) The Court disqualify Day Pitney from further representation of Mrs. Kinsley Hubby, her estate or any part of her estate now and ever more and return all fees to her estate paid by Mrs. Hubby or her estate since December 1, 2005, certified by the United States Trust Company of Hartford CT and Mr. Ron Baude, CPA, of New London, CT.
5) The Supreme Court remand all other issues in this case for a trial de novo to Superior Court Judge Elaine Gordon.
6) Because the law broke down in the state courts of Connecticut, the Supreme Court retain jurisdiction for the purpose of any order, direction, or modification of the Court's order deemed necessary.

Respectfully submitted this 18 day of September, 2008

Ben Hubby

Certificate of Service

Ben Hubby certifies he has this day served Counsel for Respondent his motion to the Supreme Court placing same in the U. S. Mail, sent to Counsel's address of record, to wit:

Mr. Allan Taylor
Counsel of Record
Day Pitney LLP
242 Trumbull St.
Hartford CT. 06103
Tel 860 275 022 FAX 860 275 0343

This 10 day of September, 2008

Ben Hubby, Petitioner

APPENDIX

S/A

STATE OF GEORGIA

COUNTY OF CHATHAM

In the matter of Kingsley K. Hubby

Appearing before the duly appointed officer authorized to take oaths, Ben Hubby, of full age and free of any mental illness, deposed and on his oath states the following:

1

I am a family practitioner and the son of Kingsley Hubby, age 99, who resides in East Lyme, Connecticut. My mother and my deceased father scrupulously made sure arrangements for their most vulnerable time were in place.

2

It's been my mother's intent to remain in our family's home. For several years she and my father required round the clock supervision by a care team headed by Marcia Dubreuil.

3

For the last several years my mother has not been capable of managing her financial affairs which were since 12/12/2005 managed by my brother, Nick Hubby until he became ill, whereupon her finances were in some disarray. A voluntary conservator of my mother's estate was appointed on April 3rd, 2007, although the witness to my mother signing the petition – Marcia Dubreuil – head of my mother's home care team – states my mother appeared not to understand the petition when signed.

4

For the past several years my mother has required 24 hour care and supervision. She does not shop for herself, meals are prepared for her; she must be supervised in showering, cleansing and hygiene.

5

Over several years my mother has lost mental capacity and recent memory and isn't aware of many of the things going on in her life, including her legal representation, nor does she appear to have understood documents and letters she's been opportuned to sign.

6

In the late fall 2006, when I stopped in on my way to see my brother in hospital in Maine, she asked where I was going. I told her Portland, then she asked again and again where I was going.

7

In speaking to my mother on February 9th, 2007 regarding my belief that she needed a conservator, I observed that she lost the foundation of my short discussion, such that when I was finished, I knew she did not follow what I had said, though it was very straightforward.

8

When my sister, Kinny, passed on September 8, 2007, my mother was informed the next day. Almost immediately afterwards appeared to forget. Since, I've been called by her care team asking me how to approach my mother asking how Kinny is doing.

9

As my mother's physician son, I state her survival and care is completely dependent upon others, especially the home care team that has been constructed for her care

and safety.

All of the facts set forth here are true and correct to the best of my knowledge.

Sworn to and subscribed _____ before me this 27th _____ day of November, 2007

_____ _____

Ben Hubby Notary

S/B

Kingsley Hubby

Dear Judge McNamara:

I am writing to tell you that I am completely satisfied with my representation by Dane Dudley and the firm Day Pitney! I am confident that my interests have been served and that my estate plan is well executed. I am grateful to my son, Nick, for bringing us together and for all of his hard work on my behalf.

I have enjoyed my meetings with Mr. Dudley and look forward to continuing our work together.

Sincerely

Kingsley K. Hubby

March 31st 2007

S/C

NO: CV07-4007105S

BEN HUBBY

SUPERIOR COURT

NEW LONDON JUDICIAL DISTRICT

AT NEW LONDON

KINGSLEY K. HUBBY, ET AL JUNE 18, 2007

MEMORANDUM OF LAW IN OPPOSITION TO

MOTION FOR COURT ORDERED EVALUATION

Citing no authority, the Appellant moves this Court to order his mother, Kingsley K. Hubby, to submit to an evaluation, "to determine whether Mrs. Hubby has the capacity to fully understand documents and letters she might be opportuned to sign." Appellant's Brief, Para. 3. In support of this proposition, he references events that allegedly occurred during the period of March, 2006, through July 7, 2006. Appellant's Brief, Para. 2. These events are 13 months at the earliest and 9 months at the latest before the April 3, 2007, Appointment by the East Lyme Probate Court of Mrs. Hubby's Voluntary Representative, George Gallup.

Should the Court ultimately hear this Appeal, it will sit as a Court of Probate in a trial de novo of Mrs. Hubby's Application for Voluntary Representation. CGS Sec. 45a-646; CGS Sec. 45a-186(a) (Aggrievement by Decree of the Probate Court required to appeal.)

In appeals from probate, the Superior Court is a Court of limited jurisdiction. Graham v. Estate of Graham, 2 Conn. App. 251, 254 (1984). It, like Probate Court, has only such powers as are given it by statute or are reasonably to be implied in order to carry out its statutory powers. "It is a familiar principle that a Court which exercises limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly described by the enabling legislation. The Probate Judge is not a Chancellor. His

[**Not:** *Just Page 1 and Page 3 of this memorandum is available to Ben Hubby at this time, for which he apologizes to the Court, however these pages are offered to show Gallup and attorney McKeever opposed competency examination for Mrs. Hubby. The third page follows*]

This Court should not countenance as a litigation tactic by any party an allegation, real or imagined, of incapacity. The authority to determine incapacity of any person is vested, in the first instance, in the Probate Court; CGS Sec. 45a-648, and incapacity can only be determined after a Hearing and by clear and convincing evidence. CGS Sec. 45a-650(d).

It should be noted that CGS Sec. 45a-648(b) provides in its relevant part that, "any person who willfully testifies either in Court or by report to the Court falsely to the incapacity of any person in any proceeding provided for in Sections 45a-644 to 45a-662, inclusive, shall be fined not more than $1,000.00 or imprisoned not more than one year, or both."

For all of the foregoing reasons, the Motion for Evaluation should be denied.

KINGSLEY K. HUBBY AND

GEORGE GALLUP, CONSERVATOR

By_____

Kenneth M. McKeever
P.O. Box 514
Niantic, CT 06357-0514
(860) 739-6296

S/D

David Thompson M. D.
22 WEST MAIN STREET
NIANTIC, CONN. 06357
TELEPHONE: 739-4431

3/11/08

Re: Kingsley Hubby

Dear Dr. Hubby,

At the present time, I am restricted to discussing your mother's medical situation based on HIPPA with her and her conservator, George Gallup.

Sincerely,

David D. Thompson, Jr. MD

S/E

Ben Hubby, M.D.

03/28/2007

Re: Mrs. Kingsley Hubby

Ms. Patricia Stratos
Clerk
Probate Court, East Lyme District
Town Hall
Town of East Lyme
Fax: (860) 739-6930

Dear Patricia,

Having been cured by the most recent bill (check coming in the mail) I am going to try very hard not to offer future motions.

But as negotiations ended, I respectfully request the Court to take up my petition and filed in early January, to be considered alongside the one for George Gallup, for the Courts consideration at the hearing set for 4/3/2007.

Thank you very much.

Ben Hubby

S/F

STATE OF CONNECTICUT

COURT OF PROBATE

[Type or print in black ink]

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045

ESTATE OF/IN THE MATTER OF ORDER | DATE OF

Kingsley Hubby (07-001) | **August 3, 2007**

PETITIONER

Ben Hubby, 815 East 66th Street, Savannah, GA 31405

DATE OF HEARING | TIME OF HEARING | PLACE OF HEARING *[Street and Town]*

September 18, 2007
10:00 AM

East Lyme Probate Court
110 Pennsylvania Avenue
Niantic, CT 06357

UPON THE APPLICATION OF THE PETITIONER FOR the appointment of a conservator of both the estate and the person of the above named respondent AS PER APPLICATION ON FILE MORE FULLY APPEARS

IT IS ORDERED THAT: Said application be heard and determined at the court of probate at the place, date, and time indicated above.

BY ORDER OF

.....

THE COURT | Judge Ass't Clerk

S/G

STATE OF CONNECTICUT
COURT OF PROBATE

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045

ESTATE OF/IN THE MATTER OF

KINGSLEY HUBBY (07-001)

At a court of probate, held at the time and place of hearing set by the Court, together with any continuances thereof, as of record appears, on the petitioner's MOTION REQUESTING PROBATE COURT JUDGE JEFFREY MCNAMARA TO RECUSE HIMSELF FROM ALL FURTHER JUDICIAL PROCEEDINGS INVOLVING BEN HUBBY

PRESENT: Hon. Jeffrey A. McNamara, Judge

After due hearing, THE COURT FINDS that:

Notice of hearing is waived.

And it is ORDERED AND DECREED that:

The petitioner, Ben Hubby's, Motion Requesting Probate Court Judge Jeffrey McNamara to Recuse Himself from all Further Judicial Proceedings Involving Ben Hubby is hereby denied.

Dated at Niantic, Connecticut, this 3rd day of August, 2007.

.....
Jeffrey A. McNamara, Judge

S/H

DOCKET SUMMARY II RETURN 05/15/2007
04/15/2008
P/S NEW LONDON SUPERIOR FILE 05/15/2007
9:53:33
HUBBY, BEN VS HUBBY,
KINGSLEY
LAST ACT 03/31/2008 ADR STATUS: NONE
RECLAIM
HIGH ENTRY 140-00 TO/
S/C?
125-00 PTF 08/06/2007 MOTION FOR
ORDER 45 DIARY 08/13/2007 DEND
08/27/2007 HURLEY,
126-00 PTF 08/08/2007 MOTION FOR ORDER
DIARY 08/15/2007 DEND 08/27/2007 HURLEY, R.
127-00 PTF 08/20/2007 REQUEST

128-00 PTF08/29/2007 MOTION TO
DISQUALIFY DIARY 09/05/2007 DEND 09/10/2007
HURLEY, R.
129-00 PTF 09/06/2007 MOTION FOR A NEW
TRIAL 45 DIARY 09/13/2007

S/I

In the matter of Kingsley K. Hubby
CV 07 400 7105
Appearing before the duly appointed office authorized to administer oaths, Ben Hubby, of full age and free of any mental illness, deposed and on his oath, states the following:

1

I am the appellant before the Connecticut Superior Court in the matter of Kingsley K. Hubby, my mother,, of East Lyme, Connecticut.

2

In the summer of 2007, I submitted a request for a trial de novo on all issues in Superior Court, with the exception of attorney disqualification, which is on appeal.

3

On the docket sheet in Superior Court, this pleading was entered as Number 129 – Motion for New Trial – although #128 was placed in ink on the left hand corner of the first page, which on the docket sheet is indicated as Motion to Disqualify.

4

I never received an order on my request, treated as a motion by the Clerk's Office.

5

On April 10th at 3 PM I called the Clerk's Office and spoke to Donna, who looked my case up on the computer. Donna informed me that no order had been entered on the motion of a new trial, indicated as #129 on the docket sheet.

Donna put me on hold for several minutes while she checked another source. When she came on line, she said, "I do not see where #129 was ruled on... There is no order."

Further, Affiant sayeth not. This 16th day of April, 2008.

_____ _____

Ben Hubby Notary

S/J

: APPELLATE COURT
: STATE OF CONNECTICUT
IN THE MATTER OF KINGSLEY HUBBY
: DECEMBER 13, 2007

APPELLANT'S MOTION, ON RESOLUTION OF APPEAL, TO HAVE CASE REMANDED TO THE COURT ADMINISTRATOR FOR TRANSFER TO THE FAMILY TRIAL DOCKET OF THE MIDDLESEX DISTRICT SUPERIOR COURT FOR A TRIAL DE NOVO ON ALL OUTSTANDING ISSUES.

Under Connecticut Practice Book Section 12-1 and Connecticut General Statutes Section 51-347b(a), COMES APPELLANT, on resolution of this appeal, to move this Honorable Court as a judicial authority to remand this case to the Chief Court Administrator for transfer to the Family Trial Docket, Judge Elaine Gordon presiding, to whom this case was originally assigned, for fairness for all parties

History of case.

In December, 2006, having discovered his mother's stewardship was fraught with problems such as conflict of interest in her legal representation, his siblings refusing to conference, Appellant petitioned to be named conservator of Mrs. Hubby's person on January 7, 2007 so as to solve problems in her life. To gain family agreement, Appellant lay his petition aside for in good fait negotiations from January to mid March, 2007. Because of violations of the RPC and harm caused, Appellant moved to disqualify attorney Dudley and his firm from representing Mrs. Hubby. Attorney Dudley and Mr. Gallup – Mrs. Hubby's son in law – came forth with a petition naming Gallup as conservator of Mrs. Hubby's estate. On 4/3/07, Probate Court denied the motion to

[**Note**: *Ben Hubby exhibits just the first page of his motion to show that he moved in Appellate Court to have the case transferred to the Middlesex Family Court where sits Judge Elaine Gordon, originally assigned this case.*]

S/K

CHAPTER 12

TRANSFER OF ACTIONS

Sec.

1-1. Procedure for Transfer
1-2. Transfer of Action Filed in Wrong Location of Correct Court
1-3. Transmission of Files and Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 12-1. Procedure for Transfer

Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial district court location or to any geographical area court location, or from a geographical area court location to any other geographical area court location or to any judicial district court location, by order of a judicial authority (1) upon its own motion or upon the granting of a motion of any of the parties, or (2) upon written agreement of the parties filed with the court. (See General Statutes 51-347b and annotations.)

(P.O. 1978-1977, Sec. 212.)

Sec. 12-2. Transfer of Action Filed in Wrong Location of Correct Court

A clerk of the court of a judicial district or geographical area should not accept a civil cause which is made returnable to a judicial district or geographical area of which such person is not the clerk. A clerk who does accept and enter such a civil cause shall, upon discovery

of the error, bring the matter to the attention of the court. The judicial authority shall then order the plaintiff to file a motion to transfer with such notice to the defendant as the judicial authority may direct. If the plaintiff complies, the motion to transfer shall be granted; but if the plaintiff fails to comply with the order of the judicial authority with a reasonable time, the judicial authority shall dismiss the action with costs.

(P.B. 1978-1997, Sec. 213.)

Sec. 12-3. Transmission of Files and Papers

Upon the transfer of any action, the clerk of the court in which such action is pending shall transmit to the clerk of the court to which such cause is transferred the original files and papers in such cause with a certificate of such transfer, who shall enter such cause in the docket of the court to which it is so transferred; and such cause shall thereafter be proceeded with in the same manner as if it were originally brought to such court. When a case which has been claimed for trial is subsequently transferred to another court, a new certificate of closed pleadings shall not be required, and its position on the inventory of pending cases of the transferee court shall be determined by the certificate of closed pleadings date in the original file. Where only the trial of an issue or issues in an action is transferred, the files, after such issues have been disposed of, shall be returned to the clerk of the court where the action originated and judgment may be entered in such court. (See General Statutes 51-347b; see also Section 14-8.)

(P.B. 1978-1997, Sec. 215.) (Amended June 29, 1998 to take effect Jan. 1, 1999.)